



Research SPOTLIGHT

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Cracking Down on Crank:

the Combat Methamphetamine Epidemic Act of 2005 and its Effect on Texas Law Regulating Sales of Certain Nonprescription Medicines

General Barry McCaffrey, White House director of national drug policy for the Clinton Administration, called it “the worst drug ever to hit America.” He was referring to methamphetamine. Known by many names, including meth, crank, and ice, this synthetic drug is a powerful addictive stimulant that is easily made in small home laboratories using inexpensive and easily obtained ingredients. Originally limited to a few areas in the United States, meth abuse has spread rapidly throughout the country. In 2005, the federal government estimated that more than 12 million Americans have tried meth and 1.5 million are regular users.

Meth comes in a number of forms and can be sniffed, taken orally, or injected. Depending on the method used, the user can experience an intense, pleasurable rush within minutes, and the effects can continue for

more than 12 hours. The user feels a burst of energy and wakefulness. However, the drug can cause insomnia, anxiety, confusion, paranoia, hallucinations, and delusions. Chronic users may exhibit psychotic or extremely violent behavior. The drug is highly addictive, and chronic users may experience intense craving for another high, but, as the body builds up tolerance to the drug, users may take higher doses or use the drug more frequently. Long-term use can cause a wide range of serious and possibly fatal physical problems, including brain damage, malnutrition, lead poisoning, liver and kidney damage, and stroke.

Meth can be easily manufactured in clandestine laboratories using common household products, inexpensive equipment such as jars and rubber hoses, and recipes that can be found on the Internet. Ingredients include: over-the-counter cold and allergy medicines, such as Sudafed or Claratin, containing ephedrine, pseudoephedrine, or phenylpropanolamine (base chemicals); iodine; ammonia; starter fluid; drain cleaner; and rubbing alcohol. Some ingredients are extremely flammable or explosive, and a meth lab will produce five to six pounds of toxic waste for every pound of meth produced. Meth adversely affects communities in many ways, from increases in crime and domestic abuse to child neglect, the spread of HIV through shared needles and unprotected sex, and greater demands on already strained social services.

“The crystalline white drug quickly seduces those who snort, smoke or inject it with a euphoric rush of confidence, hyperalertness and sexiness that lasts for hours on end. And then it starts destroying lives.”

—David J. Jefferson
“America’s Most Dangerous Drug,”
Newsweek, August 8, 2005

Texas, like the rest of the country, has been adversely impacted by the spread of meth abuse. In 2003, the National Drug Intelligence Center declared that methamphetamine presented a significant threat to Texas, with high-purity, low-cost meth readily available and widely abused. In 2002, Texas ranked second in the nation in the quantity of meth seized. Although meth smuggled in from Mexico dominated the illegal market, locally produced meth was also available and becoming more prevalent. Abuse was spread throughout the state, from nightclubs in Dallas and Houston to rural areas. Many Texas law enforcement agencies reported the level of meth abuse was rising in their jurisdictions. The social consequences of meth abuse were also spreading. The number of meth labs seized by law enforcement officials was increasing throughout the state, from isolated rural areas to hotel or motel rooms. The spread of these labs, with their fire risks and production of hazardous materials, presented serious environmental and safety threats. Increasing numbers of women and adolescents were using meth, and more persons arrested for crimes were found to have methamphetamine in their system. Emergency room admissions and deaths from methamphetamine abuse were reported as rising. Criminal gangs from Mexico, and also Texas motorcycle and prison gangs, were involved in the smuggling, manufacture, and distribution of meth throughout the state.

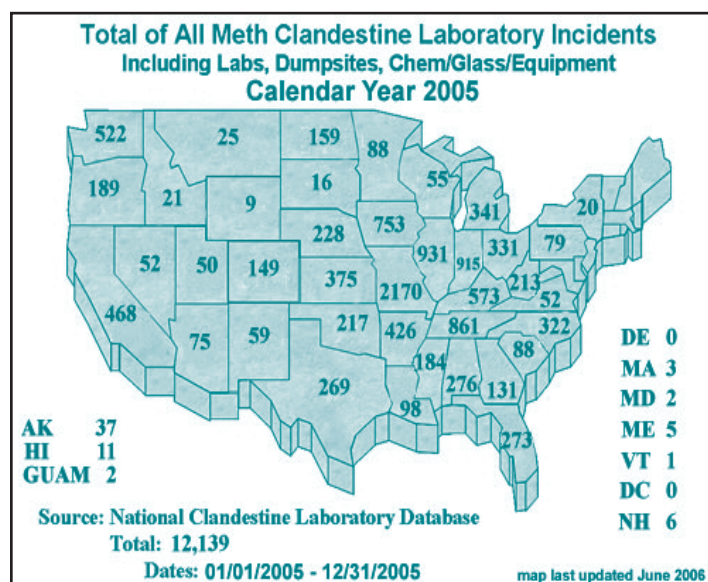
This threat to Texas continues. A 2006 assessment of substance abuse trends in Texas reported that calls to Texas poison control centers involving meth exposure increased from 144 in 1998 to 423 in 2004. Admissions

to treatment programs for methamphetamine and amphetamine abuse rose from 5 percent of all admissions in 2000 to 13 percent in 2005. Meth smuggled from Mexico or locally produced in clandestine labs was reported as widely available throughout the state.

States have responded to the meth epidemic in a number of ways. As of August of 2005, 39 states, including Texas, have enacted laws seeking to restrict the availability of over-the-counter medicines containing base chemicals. These laws include:

- criminalizing the purchase or possession of such medications with the intent to manufacture meth;
- requiring that these medicines be placed behind the counter;
- limiting the amount of such medicine that can be purchased at one time; or
- requiring persons purchasing such medicines to sign a logbook or show identification.

Other laws enacted by states increase the penalties for the sale of and manufacture of meth, address the cleanup of meth laboratories, and expand child abuse or neglect laws to include exposing a child to a controlled or illicit substance. However, while such statutes may have been instrumental in lowering the number of clandestine meth laboratories in the United States, production has moved over the border to Mexico, and it is estimated that half of the meth sold in the United States is now smuggled into the country from Mexico.



Texas Law Regulating Over-the-Counter Sales

H.B. 164, enacted by the 79th Legislature, Regular Session, 2005, added Chapter 486 to the Texas Health and Safety Code, regulating over-the-counter sales of products containing ephedrine, pseudoephedrine, and norpseudoephedrine. A pharmacy selling such products must maintain them either behind the pharmacy counter or in a locked case within 30 feet of and in the direct line of sight of a sales counter continuously staffed by an employee. Businesses without a pharmacy must obtain a certificate of authority from the Texas Department of State Health Services before they may sell such products, and the same access restrictions apply.

Before completing a sale of the product, the business must:

- require the customer to show a photo identification card indicating that the person is over 16 years of age;
- require the customer to sign for the purchase;
- make a record of the sale, including the name of the purchaser, the date, the item and the number of grams purchased; and
- take necessary action to prevent a person from purchasing in a single transaction more than two packages of such products or six grams of ephedrine, pseudoephedrine, and norpseudoephedrine.

The business must maintain the record for at least two years from the date the record was made. The bill also provides for administrative penalties of up to \$20,000 for violations of these restrictions on over-the counter sales.

Combat Methamphetamine Epidemic Act of 2005

H.R. 3199, the newly enacted USA PATRIOT Improvement and Reauthorization Act of 2005, includes the Combat Methamphetamine Epidemic Act of 2005 (CMEA). Under this new federal law, a lawful nonprescription drug containing base chemicals is defined as a “scheduled listed chemical product” (SLCP). A retail distributor, including a pharmacy, is barred from selling to any purchaser any SLCP exceeding a daily amount of 3.6 grams of a base chemical. Nonliquid SLCPs may be sold only in blister packs, each blister containing not more than two dosages, or in unit dose packets or pouches. The seller must place SLCPs behind the counter or in a locked case to ensure that consumers do not have direct access to them.

Further, sellers must maintain an electronic or written logbook identifying the name of the SLCP sold, the quantity, the names and addresses of the purchasers, and the dates and times of such sales (this does not apply to the sale of a single package containing no more than 60 milligrams of pseudoephedrine).

Before the sale can take place, the prospective purchaser must show the seller a state or federal photo identification card and must sign the logbook, entering his or her name, address, and the date and time of the sale. The logbook



must include a notice to consumers that providing false information may subject them to criminal prosecution. The seller must ensure that the name matches that on the identification card and that the date and time are correct. Information in the logbook must be maintained for not less than two years after the date of the entry. Employees who sell or deliver the product to the public must undergo training regarding the requirements governing SLCP sales, and the seller must certify to the United States attorney general that the employees have received such training.

There are also limits on mail-order purchases and consumers. For mail order sales, a person may not sell a SLCP containing more than 7.5 grams of a base chemical per customer during a 30-day period. The retailer must also, prior to shipping, confirm the identity of the purchaser. Consumers are prohibited from purchasing during any 30-day period SLCP totaling more than nine grams of a base chemical, of which no more than 7.5 grams may be purchased by mail.

The requirements on placing SLCPs behind the counter or in a locked case and concerning logbooks for recording sales take effect September 30, 2006. The provisions concerning mail-order sales take effect 30 days after the effective date of the Act. There are also criminal and civil penalties for violations.

Other provisions of CMEA include regulating the importation and distribution of base chemicals, enhanced penalties for smuggling meth or base chemicals or for exposing a minor to the manufacture of meth, and grants to drug courts, programs for drug-endangered children, and programs addressing meth use by pregnant or parenting women.



Possible Preemption of Texas Statutes

The CMEA does not contain any language expressly preempting state laws seeking to regulate the sale of over-the-counter medications containing the base chemicals that are precursors to meth production. Article VI of the United States Constitution provides that the laws of the United States shall be the supreme law of the land. This clause, known as the Supremacy Clause, preempts and invalidates state laws that interfere with, or are contrary to, federal law. Congress may include express

preemptive language in a federal statute, but preemption may also be inferred when the scheme of federal regulation is sufficiently comprehensive to leave no room for supplementary state regulation, when conflict between state and federal law makes it impossible to comply with both laws, or when the state law is an obstacle to the accomplishment and execution of the federal law.

A December 14, 2005, press release from United States Senator Diane Feinstein, who cosponsored the provisions restricting the sale of over-the-counter medicines containing base chemicals, states that the federal legislation does not preempt current state laws restricting access to methamphetamine ingredients, that it only applies to states that have not already enacted such measures. However, organizations such as the National Conference of State Legislatures have interpreted CMEA as preempting less restrictive state laws but not affecting states with more stringent statutes. Subsequent regulations may clarify the reach of the federal Act.

—by Sharon Hope Weintraub, SRC

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